



The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LXIV]

TUESDAY, FEBRUARY 14, 2023 / MAGHA 25, 1944

Separate paging is given to this part in order that it may be filed as a Separate Compilation.

PART V

Bills introduced in the Gujarat Legislative Assembly

(To be translated into Gujarati and the translation to be published in the *Gujarat Government Gazette*. The date of publication to be reported.)

The following Bill is published with the consent of the Speaker given under the proviso to rule 127A of the Gujarat Legislative Assembly Rules: -

THE GUJARAT PUBLIC EXAMINATION (PREVENTION OF UNFAIR MEANS) BILL, 2023.

GUJARAT BILL NO. 1 OF 2023.

A BILL

to prevent unfair means and leakage of question paper in public examination and to provide for matters connected therewith or incidental thereto.

It is hereby enacted in the Seventy-fourth Year of the Republic of India as follows:-

- (1) This Act may be called the Gujarat Public Examination (Prevention of Unfair Means) Act, 2023. Short title and commencement.
- (2) It shall come into force on such date, as the State Government may, by notification in the *Official Gazette*, appoint.

Definitions. 2. In this Act, unless the context otherwise requires,-

- (a) “conduct public examination” means and includes preparation, printing, supervision, coding, processing, distribution of question papers, evaluation, declaration of result, etc.;
- (b) “examinee” means a person who has been granted permission by examination authority to appear in the public examination and includes a person authorized to act as scribe on his behalf in the public examination;
- (c) “examination authority” means an examination authority as specified in the Schedule or such other authority as may be specified by the State Government by notification in the *Official Gazette*;
- (d) “examination centre” means such premises, as may be specified by the examination authority to conduct public examination;
- (e) “inspection team” means persons authorised by the examination authority to inspect any examination centre;
- (f) “organized crime” means an unlawful activity committed by a person or a group of persons indulging in unfair means to pursue or promote a shared interest for wrongful gains;
- (g) “public examination” means any examination conducted by the examination authority as specified in the Schedule or conducted by such other authority as may be notified by the State Government under clause (c);
- (h) “Schedule” means the Schedule appended to this Act;
- (i) “State Government” means the Government of Gujarat;
- (j) “supervisory staff” includes persons authorised by the examination authority to conduct public examination;
- (k) “unfair means” includes,-
 - (i) in relation to any person including an examinee,
 - (a) to impersonate or leak or attempt to leak or conspire to leak; or
 - (b) to procure or attempt to procure or possess or attempt to possess question paper in unauthorised manner; or
 - (c) to solve or attempt to solve or seek assistance to solve or to assist to solve question paper in unauthorised manner;
 - (ii) directly or indirectly assists the examinee in any manner whatsoever, in the public examination for monetary or wrongful gains, in relation to any person other than examinee.

Prevention of use or indulgence in unfair means. 3. No person shall use or indulge in any unfair means in any public examination or the conduct of public examination.

Unauthorised help received by the examinee. 4. If the examinee, during the public examination, takes an unauthorised help from any person directly or indirectly or from any material written, recorded, copied or printed, in any form whatsoever, or use of any unauthorised electronic or mechanical instrument or gadget, he shall be referred to the examination authority and the decision of the examination authority in such case shall be final.

Unauthorised possession and disclosure of question paper. 5. No person authorised by virtue of his duties in conduct of public examination shall, before the time fixed for opening and distribution of question papers-

(a) open, leak or procure or attempt to procure, possess or solve such question paper or any portion or a copy thereof; or

(b) give any confidential information or promise to give such confidential information to any person or examinee, where such confidential information is related to or in reference to such question paper.

6. No person who is not lawfully authorised or permitted by virtue of his duties to do so, shall, before the time fixed for the distribution of question papers-

(a) procure or attempt to procure or possess, such question paper or answer sheet or OMR sheet or any portion or copy thereof in any form; or

(b) impart or offer to impart, such information which he knows or has reason to believe to be related to, or derived from or to have a bearing upon such question paper.

7. No person, who is entrusted or engaged with any work pertaining to public examination shall, except where he is permitted by virtue of his duties so to do, directly or indirectly reveal or cause to be revealed or make known to any other person any information or part thereof which has come to his knowledge by virtue of the work being so entrusted to him.

8. No person who is not entrusted or engaged with the work pertaining to the public examination or conduct of public examination or who is not an examinee, shall enter the premises of the examination centre.

9. No person who is entrusted or engaged with the work pertaining to the public examination shall use or cause to be used any place, other than the examination centre, for the purpose of holding public examination.

10. (1) Whenever an offence under this Act has been committed by the Management or Institution or Limited Liability Partnership or others, every person who at the time the offence was committed, was in-charge of, or was accountable to the Management or Institution or Limited Liability Partnership or others for the conduct of the business of the Management or Institution or Limited Liability Partnership or others, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by the Management or Institution or Limited Liability Partnership or others and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, partner, manager, secretary or other officer of the Management or Institution or Limited Liability Partnership or others, such director, partner, manager, secretary or other officer shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

11. No person who is on the management or on the staff of an institution which is being used for the holding of a public examination, or who is entrusted with any work pertaining to public examination, shall provide any help or assistance to an examinee in using unfair means in the public examination.

12. (1) Any examinee indulging in unfair means shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine, which shall not

Unauthorised possession or disclosure of question paper and answer sheet or OMR sheet in any form.

Prevention of leakage by person entrusted or engaged with examination work.

Prohibition to enter examination centre.

No place other than examination center shall be used for public examination.

Offence by management, institution or others.

Prohibition to assist.

Offences and penalties.

be less than one lakh rupees and in case of default of payment of fine, such examinee shall also be punished with imprisonment in accordance with the provisions of the Code of Criminal Procedure, 1973.

2 of 1974.

(2) If any person obstructs or threatens any member of the inspection team, supervisory staff, examination authority, officer or person appointed by the examination authority for performing duty or from entering any examination centre, he shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees and in case of default of payment of fine, such person shall also be punished with imprisonment in accordance with the provisions of the Code of Criminal Procedure, 1973.

2 of 1974.

(3) If any person, including examinee, whether entrusted or authorized with the conduct of public examination or not, in conspiracy or otherwise indulges or attempts to indulge in unfair means or contravenes or abets to contravene any of the provisions of this Act, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment of ten years and shall also be liable to fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and in case of default of payment of fine, such person shall also be punished with imprisonment in accordance with the provision of the Code of Criminal Procedure, 1973:

2 of 1974.

Provided that the Court may for any adequate and special reasons to be recorded in writing impose a sentence of imprisonment for a term of less than five years.

(4) If any person in an organized crime in conspiracy with the examination authority or otherwise indulges or attempts to indulge in unfair means or contravenes or abets to contravene any of the provisions of this Act, he shall be punished with imprisonment for a term which shall not be less than seven years and may extend to ten years and with fine which shall not be less than one crore rupees and in case of default of payment of fine, such person shall also be punished with imprisonment in accordance with the provision of the Code of Criminal Procedure, 1973.

2 of 1974.

Debarred on conviction. 13. An examinee who has been convicted of an offence under the provisions of this Act shall be debarred from any public examination for a period of two years.

Attachment and confiscation of property. 14. In case of conviction of a person in an organized crime in conspiracy with the examination authority or otherwise indulges or attempts to indulge in unfair means or contravenes or abets to contravene any of the provisions of this Act, the court shall make an order of recovery of any wrongful gains made by such person, by way of attachment and sale of any of the assets/property, moveable, or immovable, or both, of such person by following the procedure laid down in the Code of Criminal Procedure, 1973.

2 of 1974.

Liabilities of Management etc. to pay all cost and expenditure. 15. If any person of the Management or Institution or Limited Liability Partnership or others has been found guilty of the offences under this Act, the Management or Institution or Limited Liability Partnership or others shall be liable to pay all cost and expenditure related to the public examination, determined by the Court and shall be banned forever.

Public servant. 16. Every person engaged in the conduct of the public examination, while acting or purporting to act in pursuance of the provisions of this Act or rules made thereunder, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Offences to be cognizable, non-bailable and non-compoundable. 17. All offences specified under this Act, shall be cognizable, non-bailable and non-compoundable.

18. Any offence committed under this Act shall be investigated by the Police Officer not below the rank of Police Inspector but preferably by the Deputy Superintendent of Police. **Investigation of the offences.**

19. The provisions of this Act shall be in addition to, and not in derogation of, any other law in force on the subject. **Application of other laws not barred.**

20. No suit, prosecution or other legal proceeding shall lie against the State Government or any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder for the conduct of public examination. **Protection of action taken in good faith.**

21. (1) The State Government may, by notification in the *Official Gazette*, make rules to carry out the purposes of this Act. **Power to make rules.**

(2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be they are made, and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make, during the session in which they are so laid or the session immediately following.

(3) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

22. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, within a period of two years from the commencement of this Act, by an order published in the *Official Gazette*, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removal of difficulty. **Power to remove difficulties.**

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature.

SCHEDULE

(See section 2(c))

1. The Gujarat Public Service Commission.
2. The Gujarat High Court.
3. The Gujarat Subordinate Services Selection Board.
4. The Gujarat Panchayat Service Selection Board.
5. The State Examination Board.
6. Any other authority or agency or recruitment committee or Board engaged or constituted by the State Government.
7. State Funded Universities.
8. The Gujarat Secondary and Higher Secondary Education Board.
9. Public Sector Undertaking owned by the State Government.
10. Any Societies, Corporations, Local Bodies and all PSU's owned substantially or partially by the State Government.

STATEMENT OF OBJECTS AND REASONS

The 34th Report of the Gujarat State Law Commission has recently examined the issue of paper leak in the recruitment examinations conducted by the recruiting agencies in the State Government and have recommended that the issue of paper leak needs to be resolved as expeditiously as possible by enacting a special law against the paper leak and the activities like it may be dealt with firm hands.

The constitutional values under articles 14 and 16 mandate that selection processes conducted by the public authorities to make recruitments have to be fair, transparent and accountable. It is seen that it is not a mere matter of administrative procedure but as a principle of service jurisprudence, it finds embodiment in the constitutional duty that the public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under article 16(1) is a constitutional requirement and it is also a fundamental requirement under article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of a systematic fraud or irregularities, the entire process becomes vitiated.

In matters of recruitment to posts in State Government therefore, the leakage of question papers not only betrays the trust of the general public and adversely affects the credibility of the government but also the State suffers substantial administrative cost when examinations have to be called off. The recruitment examinations are often compromised due to deceitful means and measures. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside source. Unfortunately, the issue has assumed dimensions of organized crime and involves huge pecuniary advantages to nefarious persons. This is an offence against the society at large. Hence, there is an urgent need to restore public confidence in the sanctity of selection to public posts and the requirement of ensuring fairness to candidates who invest time and resources in attempting to clear through a selection. With a view to secure and sustain the confidence of the public in general and to ensure unquestionable trustworthiness in the public recruitment examinations, the Government of Gujarat proposes to bring this legislation to check use of unfair means in examinations.

The following notes on clauses explain, in brief, some of the important provisions of the Bill: -

- Clause 1.-** This clause provides for the short title and commencement of the Act.
- Clause 2.-** This clause defines certain terms used in the Bill.
- Clause 3.-** This clause provides for the prevention of use or indulgence in unfair means.
- Clause 4.-** This clause provides for unauthorised help received by the examinee during the public examination.
- Clause 5.-** This clause provides for unauthorised possession and disclosure of question paper.
- Clause 6.-** This clause provides for unauthorised possession or disclosure of question paper and answer sheet or OMR sheet in any form.
- Clause 7.-** This clause provides for the prevention of leakage by any person entrusted or engaged with examination work except where he is permitted by virtue of his duties.
- Clause 8.-** This clause prohibits any person, who is not entrusted or engaged with the work pertaining to public examination or conduct of public examination or who is not an examinee, to enter the premises of public examination centre.

Clause 9.- This clause provides that any person, who is entrusted or engaged with the work pertaining to the public examination shall not use any place, other than the examination centre, for the use of the public examination.

Clause 10.- This clause provides for offences by management, institution or others.

Clause 11.- This clause provides for the prohibition of any help or assistance to an examinee in using unfair means in the public examination.

Clause 12.- This clause provides for offences punishable under the Act and penalties thereof.

Clause 13.- This clause provides for debarring the examinee from any public examination on conviction on conviction of an offence punishable under the Act.

Clause 14.- This clause provides for the attachment and confiscation of property of any person who is engaged in an organized crime in conspiracy with the examination authority or otherwise indulges or attempts to indulge in unfair means or contravenes or abets to contravene any of the provisions of the Act.

Clause 15.- This clause provides for liabilities of Management etc. to pay all cost and expenditure related to the examination, if found guilty of the offences under the Act.

Clause 16.- This clause provides that every person acting or purporting to act in pursuance of the provisions of this Act or the rules made there under shall be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 17.- This clause provides that all the offenses under this Act to shall be cognizable, non-bailable and non-compoundable.

Clause 18.- This clause provides that the offences committed under this Act shall be investigated by the Police Officer not below the rank of Police Inspector but preferably by the Deputy Superintendent of Police.

Clause 19.- This clause provides that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 20.- This clause provides for usual indemnity for the action done or taken in good faith.

Clause 21.- This clause empowers the State Government to make rules to carry out the purposes the Act.

Clause 22.- This clause empowers the State Government to remove difficulties arising within a period of two years from the commencement of the Act.

HARSH SANGHAVI,

FINANCIAL MEMORENDUM

The existing staff of the authorities and different Departments will perform the functions to carry out the objects of the Act and as such, the Bill, if enacted and brought into force, would not involve any additional expenditure from the Consolidated Fund of the State.

HARSH SANGHAVI,

MEMORANDUM REGARDING DELEGATED LEGISLATION

This Bill provides for delegation of legislative powers in the following respects: -

Clause 1. - Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette*, the date on which the Act shall come into force.

Clause 2. - Sub-clause (c) of this clause empowers the State Government to specify, by notification in the *Official Gazette*, the authorities other than the authorities as specified in the Schedule.

Clause 21. - Sub-clause (1) of this clause empowers the State Government to make, by notification in the *Official Gazette*, rules for carrying out the purposes of the Act;

Clause 22. - sub-clause (1) of this clause empowers the State Government to remove difficulties, by an order published in the *Official Gazette*, arising within a period of two years from the commencement of the Act.

The delegation of legislative powers as aforesaid is necessary and is of normal character.

Dated the 14th February, 2023.

HARSH SANGHAVI.

By order and in the name of the Governor of Gujarat,

Gandhinagar

K. M. LALA,

Dated the 14th February, 2023.

Secretary to the Government of Gujarat,

Legislative and Parliamentary Affairs Department.

